IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 26013 of 1999

Between:

1. Chirumamilla Subba Rao, S/o.China Swamaiah, Age:44 Yrs., Shop-Keeper, Valluru, Tangutur Mandal, Prakasam District.

2. Naragarla Venkateswarlu S/o.Thirupathi, Age:39 Yrs., R/o.Valluru, Tanguturu Mandal, Prakasham District. **.....**
PETITIONER

AND

1. The Station House Officer, Tanguturu.
2. The Inspector of Police, Tanguturu, Prakasham.
3. Superintendent of Police, Prakasham.
4. Valluramma Temple, rep. by its Executive Officer, Valluru, Tanguturu Mandal, Prakasham.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly in the nature of a writ of *Mandamus* declaring the action of the respondents in attempting to illegally and forcibly throw away their shops abutting the NH5 near Valluramma Temple at Valluru Village, Tanguturu Mandal, Prakasham in spite of the decree in their favour and against the fourth respondent-Executive Officer of Valluramma Temple on merits as illegal, arbitrary, capricious, *mala fide* and against the principles of natural justice and to consequently direct the respondents not to interfere with their right to carry on our business by keeping the shops between the National Highway No.5 and the fourth respondent temple compound wall at Valluru Village, Tanguturu

Mandal of Prakasham District and to pass such other and further orders as deemed fit.

Counsel for the Petitioners: Mr.K.Sarva Bhouma Rao, Advocate

Counsel for respondents 1 to 3: The Government Pleader for Home.

Counsel for Respondent No.4: Mr.Metta Chandra Sekhar Rao

The Court made the following Order:

Petitioners claim to be in occupation of the road margin of National Highway No.5 on the way to 'Valluramma Temple' since long time. Petitioners along with others filed O.S.No.469 of 1995 on the file of Principal Junior Civil Judge, Ongole, against the Executive Officer of Vallurama Temple, Valluru, for permanent injunction restraining the defendant therein from interfering with their peaceful possession and enjoyment of doing business in front of the temple, which was decreed on 07-04-1999 restraining the defendant by way of permanent injunction from interfering with the peaceful possession and enjoyment of the plaintiffs bunks except under due process of law. It is alleged that in spite of the said decree, fourth respondent did not stop his attempts, and at his instance, respondents 1 and 2 are interfering with the petitioners peaceful possession and enjoyment of doing business. Hence, this writ petition.

In answer to the Rule, Sub-Inspector of Police, Tanguturu, filed counter-affidavit on behalf of respondents 1 and 2 stating that whenever the encroachments are causing nuisance and

obstruction of traffic, petty cases have been booked from time to time and the same were compounded by imposing fine by the Special Mobile Magistrate, Ongole, against the petitioners along with others. But, the Police officials never removed their bunks nor took away their articles including the cool drink cases, coconuts etc., or threatened them not to carry their business. It is specifically denied about their interference.

Fourth respondent filed counter-affidavit stating that when the encroachments are causing obstruction for ingress and egress into the temple, they always approach the Police or other revenue officials to clear the road in the interest of devotees, who are coming to the temple and the petitioners cannot complain about making such representation to the law enforcing agencies.

Though both the counters were filed in the year 2000, the petitioners have not contradicted the findings of non-interference of the police to their business.

Learned Counsel for the petitioners contended that the Executive Officer of the Temple filed an appeal against the permanent injunction granted in O.S.No.469 of 1995, but no stay orders were granted in his favour. The petitioners cannot be forcibly evicted from the scheduled property, which is in their occupation.

When the respondents 1 and 2 specifically denied their interference with the peaceful possession and enjoyment of the petitioners, as and when the Executive Officer makes such complaint

to the Revenue Divisional Officer viz., Executive Magistrate about the nuisance, the Revenue Divisional Officer has to consider the same and take necessary steps as per Section 133 of the Cr.P.C. to remove such nuisance.

In view of the same, it is always open for the Executive Officer of the temple to approach the Executive Magistrate, viz., Revenue Divisional Officer and submit representation as and when any nuisance is caused by encroaching into the road preventing the devotees in approaching the temple. On such representation, the Executive Magistrate has to take such other steps to remove such nuisance. This order will not preclude the Executive Officer of the temple to initiate any proceedings under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act, in case the petitioners encroached into the land belongs to the temple. However, without following the due procedure, the petitioners shall not be dispossessed.

With the above observations, the writ petition is disposed of. No costs.

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30-06-2004

kdl

TO

1. The Station House Officer, Tanguturu.
2. The Inspector of Police, Tanguturu, Prakasham.
3. Superintendent of Police, Prakasham.
4. The Executive Officer, Valluramma Temple, Valluru, Tanguturu Mandal, Prakasham.
5. Two C.Cs. to the Government Pleader for Home, High Court Buildings, Hyderabad. (OUT)
6. Two C.D. Copies.